

Workmen's Compensation Act, 1923

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Introduction: Scope and object of the act

The workmen's compensation act, act 8 of 1923 came into force on 1st July 1924. It applies to the whole of India. The act gives social security to the workers. It was made when the accidents in the work areas became frequent. The use of advanced and sophisticated machinery even increased the frequency of accidents. International Labour Organization estimated that around 2.3 million women and men die due to work related accidents or diseases accounting up to 6000 deaths per day. There are around 340 million occupational accidents and 160 million victims of work-related illnesses annually all over the world¹. In the case of industrial accidents, employers could be held liable only if it is due to negligence. The act is also called the Employees Compensation Act, 1923.²

The Act to fulfil the following objectives: -

- This act aimed to create a friendly, desirable and secure environment.
- The aim was to ensure safety in case of mishappenings as the use of sophisticated machinery increased day by day and to protect the workmen from the dangers of poverty in case of injuries.
- The act aims to secure the overall welfare of the workers.³

Important definitions in the Act

The act seeks to define the important and basic terms used in the act. The definitions mentioned in the act are as follows: -

¹ World Statistic, International Labour Organization, https://www.ilo.org/moscow/areas-of-work/occupational-safety-and-health/WCMS_249278/lang--en/index.htm .

² *Workmen Compensation Act, 1923- Aspects and Objectives of the Act*, (Aug 13,2018), <https://www.lawnn.com/workmen-compensation-act/> .

³ *Id.*

- Dependent – Section 2(d) explicitly describes the people who can be said to be dependent. It includes the relatives of the dead workman specified under the section and is also applicable to particular persons in particular conditions.⁴
- Employer – The employer refers to the person or the group of persons, whether they are incorporated or not. These also include “managing agent of an employer, legal representative of a deceased employer, any other person for whom the services of a workman had been hired”.⁵
- Disablement - In simple terms, disablement under the act refers to the loss of capacity to work or move. This also affects the earning capacity of the workman. Disablement can be partial, total, temporary or permanent. Even Schedule 1 Part 2 of the act lists down the injuries which can be categorized as a permanent partial disablement.⁶
- Wages – Wages in the act constitutes any privilege or benefit which is estimated in terms of money or which could be estimated in terms of money, other than travelling allowance or any of the travelling concession or any pension or provident fund, or any special expenses undertaken for him under the course of his employment.⁷
- Workman –A person employed for a casual purpose cannot be considered a workman. Employment of casual nature means when the workman is not hired for the employer’s trade or business. A person who does an illegal or void service for an employer cannot claim to be a workman and cannot claim compensation.⁸

WORKMEN’S COMPENSATION

Employer Liable to Pay Compensation.

Section 3(1) of the Act lays down that the employer is liable in the cases when: -

- An accident caused the injury,
- An accident happens “out of and in the course of the employment”.

⁴ Workmen’s Compensation Act, 1923, §2(d) (2020).

⁵ Nidhi Shukla, *The Workmen’s Compensation Act, 1923*, (Nov 11, 2012), <https://www.slideshare.net/ushamartini/the-workmens-compensation-act-1923> .

⁶ *Id.*

⁷ *Supra* note 4.

⁸ *Workmen’s Compensation Act*,

<https://districts.ecourts.gov.in/sites/default/files/Workmen%20Compensation%20Overview.pdf> (last visited Mar 28, 2021).

- An occupational disease is taken to be an injury caused by an accident and the employer is liable for compensation.⁹

What is an accident?

Lord Macnaughten in 'Fenton v Thorley & Company'¹⁰ held an accident as "an unlocked for mishap or an untoward event which is not expected or designed". Thus, a self-induced injury cannot be held to be an accident. In 'Grime v. Fletcher'¹¹, "a person became insane as a result of the accident and then committed suicide. It was held that death was the result of the accident and compensation was awarded. But where insanity was not the direct result of the accident, compensation cannot be awarded. e.g., where suicide was due to brooding over the accident". In 'Withers v. L. B. & S. C. Railways'¹², it was held that "a series of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of the injury, would constitute together an accident to furnish a proper foundation for a claim under the Act".

Personal Injury

Personal Injury does not mean that injury should be necessarily bodily. An injury could be psychological as well such as nervous shocks or insanity, etc. If an injury is to the belonging of the workman, then such an injury is not covered under the act.¹³

"Arising out of and in the course of Employment"

The phrase is not originally from India and has been taken from English Law which deals with the same. The different interpretations of the phrase have been done in different cases, but ambiguities still exist in one way or another.

"In the course of Employment" – It means 'the period of employment'. Generally, the period of employment begins when the workman enters the place of work and ends when the workman leaves the place. But some exceptions apply to this rule: -

- 1) The use of transport services given by the employer will also constitute within the course of employment.

⁹ *Id.*

¹⁰ *Fenton v, Thorley & Company, (1903) A.C.*

¹¹ *Grime v. Fletcher, (1915) 1 K.B.*

¹² *Withers v. L. B. & S. C. Railways, (1916) 2 K.B.*

¹³ *Supra note 8.*

- 2) When the workman is in the employer's premises, it will also constitute within the course of employment.
- 3) If the workman reaches the premises of the employment early, but reasonably early or the injury occurs while he is equipping himself for the employment, it will constitute within the course of employment.
- 4) If the workman lives at a near distance from the premises of work and while moving to work, he gets injured, then the employer is liable if the workman is at a reasonable time and reasonable speed.
- 5) If the workman is in the period of rest during employment, then also it would be in the course of employment but if during the period of rest, the workman goes out of the premises of the employment and meets with an accident, then the employer is not liable.¹⁴

“Arising out of the course of Employment” - In Dennis vs White¹⁵, it was held that, "When a man runs a risk incidental to his employment and is thereby injured, then the injury arises out of the employment", it comes within the course of employment.¹⁶

Notional Extension

According to the established rules, the employment of a workman commences only when he reaches the place where he is employed. Employment simultaneously discontinues the moment the workmen leave their place of employment. The journey to and from the place of employment is usually being excluded. It is also well settled that inclusion of transportation injury is subject to the theory of notional extension of employer's premises to “include an area which the Workman passes and repasses in going to and in leaving the actual place of work”.¹⁷

Occupational Diseases

Persons involved in various occupations have a risk of getting some diseases due to the nature of their occupation, such diseases are called occupational diseases. Schedule III of the Act includes a list of occupational diseases divided into three categories, parts A, B and C. Part A includes “Anthrax, Compressed Air Sickness, Poisoning by lead tetra-ethyl and nitrous fumes”.

¹⁴ *Id.*

¹⁵ Dennis v. White, (1916) 2 K.B.

¹⁶ *Supra* note 8.

¹⁷ *Id.*

Part B includes “poisoning by lead compounds, phosphorus, mercury etc., cancer of the skin, telegraphist's cramp”, etc. Part C includes “Silicosis, Asbestosis etc.” Section 3(2) of the act says that occupational diseases are taken to be arising out of and in the course of the business.¹⁸

According to Section 3 (4), no compensation can be paid to the workman for any disease unless the disease is directly caused due to any injury which arose to the worker out of, or in the course of his employment.¹⁹

When an Employer is not liable to pay the Compensation.

An employer is not liable for compensation when: -

- When an injury does not lead to total or partial disablement for more than three days.
- When an injury does not result in death and is caused due to: -
 - Disobedience by the workman of the rules or the orders given for the safety of the workers by the employers according to their will.
 - The workman consumed the drink or drugs and the act happened when he was under the influence of it.
 - Willful disregard of any device or guard given to the worker for his safety.²⁰

Amount of Compensation

Schedule 4 of the act provides for compensation in cases of disablement. Section 4 of the act provides for compensation for: -

- 1) For death – Column 2 of Schedule 4 lists the amount that the employer is liable for the same.
- 2) For permanent total disablement - Column 3 of Schedule 4 lists the amount that the employer is liable for the same.
- 3) For permanent partial disablement - Injuries that constitute permanent partial disablement are listed in schedule 1 of the act together with the loss in the earning capacity of the workman. Schedule 4 of the act provides for the compensation for the

¹⁸ *Supra* note 8.

¹⁹ *Id.*

²⁰ *Supra* note 8.

permanent partial disablement and the compensation is computed using both the schedules. In case the injury is not listed in schedule 1, then the percentage loss in earnings is found out and computed using schedule 4. In case more than one injury is caused, the compensation for each injury is computed separately and then all the compensations are aggregated.²¹

- 4) For temporary disablement – Where an injury is caused by partial disablement whether total or partial, the employer is liable to pay half monthly wages. The 4th Schedule of the act lists the rates of half monthly wages to be paid in case of injuries.

Rules regarding payment of half monthly wages are: -

- “The first half monthly payment is made on the sixteenth day from the date of disablement when the disablement exceeds the 28 days or on the sixteenth day after the waiting period of three days of disablement when the disablement is for less than 28 days. Thereafter the payments had to be paid half monthly for the period of disablement or five years whichever is shorter.”²²
- Any lump sum paid before the half monthly by the employer may be deducted from such half monthly payment in case that sum is not for medical purposes.
- In case the disablement ends before the half monthly payment, such a payment should be made in proportion to the period of disablement.
- Section 6 of the act says that the commissioner can review the payment at the application filed by the employer or workman and can change or even remove it or even a lump sum can be said to be paid.²³

Distribution of Compensation

- 1) A woman or person with a legal disability must be given the compensation or any lump sum awarded by the commissioner and not by the employer directly.
- 2) An employer can make payments to the dependent of the deceased person, but it should not

²¹ *Id.*

²² *Supra* note 8.

²³ *Id.*

exceed the wages of three months and in case such payment exceeds the compensation, the commissioner can deduct such an amount and give it back to the employer.

- 3) Amount not less than ten rupees has to be paid to the commissioner by such a person.
- 4) Receipt of the commissioner is enough for the compensation being paid.
- 5) Compensation can be paid directly if the person is not a woman or legally disabled.
- 6) When a commissioner gets any lump sum for the woman or legally disable person, the commissioner may direct the payment.²⁴

Other Provisions regarding Compensation

Payment of Compensation

If an employer does not agree with the extent of compensation claimed, he may pay the compensation to the extent of compensation he agrees with while the workmen may claim the rest of the compensation. If the payment falls due for a month, the commissioner may direct him to pay the simple interest of 6%. If a commissioner feels that there was no reasonable reason for the delay, he may direct the employer to pay not more than 50 % of the sum due as a penalty.²⁵

Protection of Compensation

The payment or lump sum should not be paid to any other person than the workman, nor can any claim be settled through such compensation according to section 9 of the act.

Notice and Claim

No compensation shall be given or claim taken into account unless proper notice of accident has been provided within a reasonable time. The notice shall be sent to the employer/ employers or any person responsible to the employer. The state shall also direct the employers to maintain a notice book and the information furnished in the notice book is sufficient notice. The exceptions to the same are: -

²⁴ *Supra* note 8.

²⁵ *Id.*

- When the workman dies in the place of the employer or while doing the work of the employer.
- When the employer or any person responsible to the employer knows the same.
- If the commissioner feels that delay was due to a reasonable cause.²⁶

The claim must be raised within two years of accident or death or within two years from the day the workman becomes absent from work due to disease in case of occupational diseases.²⁷

Fatal Accident

In case the commissioner receives information about the fatal accident of the workman, he may send the notice to the employer. In case the employer agrees to his liability he should give the compensation within thirty days and in case he does not agree to the liability, he may give the proper cause for so. Then after the enquiry, the commissioner should inform the dependents of the deceased that they can claim if they want.²⁸

Medical Examination

In case of accidents, the employer may, within three days of the notice, offer to get the medical examination done for the workman from the qualified doctor. In case the workman refuses to do so, his compensation claim shall be suspended. In case the workman who refuses dies due to injury, it's upon the commissioner to decide about the compensation. In case the injury aggravates due to refusal, the employer is not liable to compensate for the aggravation of the same.²⁹

In case the employer employs a contractor and the workman of the contractor gets injured the employer is liable only if

- “The contractor was employed for the cause of trade or business.
- The work is being done in the course of trade or business.
- The accident occurs in the vicinity of the employer.”³⁰

²⁶ *Supra* note 8.

²⁷ Workmen’s Compensation Act, 1923, §10(2) (2020).

²⁸ *Supra* note 8.

²⁹ *Id.*

³⁰ *Supra* note 8.

In case the compensation is paid by any other person than the employer, the employer shall indemnify the same.

Other provisions

Insolvent Employer

The right of the workman to get compensation can be insured against in case the employer is insolvent, or the company is wound up, but such a right would not exist in case the company is wound up voluntarily for reconstruction or amalgamation with another company.³¹

Master and Seaman

There are some changes to how the Act will apply in the case of master and seaman which are mentioned in section 15 of the act.

Returns

The employer shall file the returns of the compensation paid according to the directions of the state government as in section 16 of the act.

Contracting out

According to section 17 of the act, “any contract by which the worker gives up his right to get compensation is null and void so far it removes the liability of the other person to pay such compensation.”³²

Penalties

Section 18 (a) covers the penalties in case there is a failure to perform the duties mentioned in the act.

Bar to Civil suits

Any civil court cannot deal with the claim or compensation, etc. as the commissioner is given the power to do so under section 19(2) of the act.

³¹ *Supra* note 8.

³² Workmen’s Compensation Act, 1923, §17 (2020).

Amount awarded to be recovered

“Any amount payable under the Act shall be recovered as an arrear of the land revenue.”³³

Commissioners

Commissioners are the officers which are appointed to deal with compensations. Matters which are dealt with by the commissioner cannot be entertained by any civil court. Application to the commissioner has to be made according to the rules mentioned in sections 21 and 22 of the acts.³⁴ Based on the applicant, “a legal practitioner, an official of the insurance company or any authorized person of the registered trade union” can appear. The commissioner may refer the question of law to the high court as it is the court of appeal.³⁵

Appeals

An appeal in high court can be filed against the following orders of the commissioner: -

- An order awarding compensation as a lump sum or concerning the interest or any penalty imposed under section 4A.
- When an award of the payment of the half-month is redempt.
- An order dealing with the compensation of the dependents of deceased or stopping the compensation for the same.
- Concerning the indemnity under section 12(2) whether allowed or disallowed.
- Concerning the memorandum of agreement whether allowing it or refusing it.³⁶

Rules

Rules regarding any part of the act can be made or changed by the state government according to section 32 of the act. These rules are subject to the rules made after the previous legislation. The rules published in the official gazette will affect the act. Under section 35, the commissioner may direct the money to the worker in a foreign country but in case of fatal accidents, the permission of the employer is needed. Any rule which is put up by the central

³³ Workmen’s Compensation Act, 1923, §31 (2020).

³⁴ Workmen’s Compensation Act, 1923, §21, 22 (2020).

³⁵ *Supra* note 8.

³⁶ *Id.*

government will pass through both the houses either in one or two sessions. The houses may modify the rules or even reject the rules which are in consideration.³⁷

Conclusion

The workmen's compensation act, 1923 was an act made to settle disputes arising at the workplace due to any accident or other injury caused to the workmen. The act was a very relevant legislation at the time the act was enacted. But, with the passage of time, the more demands of the workers have been highlighted. For example: The amount of compensation needs to be upgraded, and other injuries suffered by workmen such as contracting of Covid-19 while working should also be taken into consideration. With the passage of time, application process for compensation should also be made easier. Taking all the above factors into consideration is the need of the hour. So, the act is an effective legislation which is benefitting the worker but it should be timely amended to benefit the workers in future too.

³⁷ Diva Rai, *Employees Compensation Act, 1923: Amazing facts to know about it*, (Nov 21, 2019), <https://blog.ipleaders.in/employees-compensation-act-1923-amazing-facts-to-know-about-it/>.